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Attorney for Plaintiff
WAYNE BERRY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

**PLAINTIFF'S
STATEMENT OF POSITION REGARDING LACK OF JURISDICTION**

Plaintiff Wayne Berry here by respectfully states his position regarding the
Proposed JUDGMENT ON MOTIONS FOR FEES AND COSTS submitted to
chambers today May 17, 2007 under cover letter. A copy of the Proposed

Judgment and cover letter are attached to the Declaration of Timothy J. Hogan (the "Hogan Dec.") as Exhibits "1" and "2" respectively.

Contrary to the unsupported assertion in the cover letter, Mr. Berry respectfully states that jurisdiction has passed to Court of Appeals and the appeal has been docketed in the Court of Appeals on March 22, 2007 and therefore this Court lacks jurisdiction to act upon the proposed Judgment on Motion for Fees and Costs. *See* Court of Appeals Docket, Hogan Dec. Exhibit "3" at page 5. Mr. Berry also respectfully asks this Court to take Notice of the Docket in this case at Docket Number 1042.

Mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

Huey v. Teledyne, Inc., 608 F.2d 1234, 1237 (9th Cir. 1979) (emphasis added).

Dated: Honolulu, Hawaii May 17, 2007.

/S/Timothy J. Hogan
TIMOTHY J. HOGAN
Attorney for Plaintiff-Appellant
Wayne Berry